

## **Item SPR05-24 Response Form**

**Title:** Photographing, Recording, and Broadcasting in Court (amend Cal. Rules of Court, rule 980)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Monday, June 20, 2005
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action..*

## Invitation to Comment (SPR05-24)

Title	Photographing, Recording, and Broadcasting in Court (amend Cal. Rules of Court, rule 980)
Summary	The proposed amendment to rule 980 would expand the definition of photographing and recording to include the use of digital methods or devices.
Source	Court Technology Advisory Committee
Staff	Jane Evans 415-865-7414, jane.evans@jud.ca.gov
Discussion	<p>Advances in technology in recent years have resulted in the creation of new electronic devices for creating photographs and audio recordings. The traditional film camera and tape recorder have been supplemented by cellular telephones, personal digital assistants, and other digital media devices that can create a photographic image or aural recording. These mixed-use devices are not prohibited by rule from being brought into the courthouse or courtroom, but their potential for use as a camera or recorder has raised concern by courts that they could be used without the user having met the requirement for a judicial order permitting photographing or recording in the courtroom (Cal. Rules of Ct., rule 980).</p> <p>A few courts have issued orders or developed local policies that address having or using such devices in the courtroom, while others that have not yet developed such policies have requested that rule 980 be amended to incorporate new technologies.</p> <p>This proposal does not enumerate specific devices that are capable of photographing but would add new definitions of photographing and recording that encompass digital technology. As technology is constantly changing with new devices being created that are capable of photographing or recording, the Court Technology Advisory Committee does not seek to limit the rule to any particular device.</p> <p>Technical changes in this proposal also replace all occurrences of “shall” with “may” or “must” as part of the overall effort to eliminate “shall” from the rules, include references to specific Judicial Council forms, and conform the style to the current rule structure.</p>
	Attachment

Rule 980 of the California Rules of Court would be amended, effective January 1, 2006, to read:

**Rule 980. Photographing, recording, and broadcasting in court**

(a) \*\*\*

(b) **[Definitions]** For purposes of this rule,

(1)–(4) \*\*\*

(5) “Photographing” means recording a likeness, regardless of the method used, including by digital or photographic methods.

(6) “Recording” means the use of any analog or digital device to aurally or visually preserve court proceedings. As used in this rule, recording does not include the official court record, whether by court reporter or by digital or analog preservation.

(c) **[Photographing, recording, and broadcasting prohibited]** Except as provided in this rule, court proceedings ~~shall~~ may not be photographed, recorded, or broadcast. This rule does not prohibit courts from photographing or videotaping sessions for judicial education or publications and is not intended to apply to closed-circuit television broadcasts solely within the courthouse or between court facilities if the broadcasts are controlled by the court and court personnel.

(d) **[Personal recording devices]** The judge may permit inconspicuous personal recording devices to be used by persons in a courtroom to make sound recordings as personal notes of the proceedings. A person proposing to use a recording device ~~shall~~ must obtain permission from the judge in advance. The recordings ~~shall~~ must not be used for any purpose other than as personal notes.

(e) **[Media coverage]** Media coverage ~~shall~~ may be permitted only on written order of the judge as provided in this subdivision. The judge in his or her discretion may permit, refuse, limit, or terminate media coverage. This rule does not otherwise limit or restrict the right of the media to cover and report court proceedings.

(1) *(Request for order)* The media may request an order on a ~~form approved by the~~ Judicial Council form MC–500. The form ~~shall~~ must be filed at least five court days before the portion of the proceeding to be covered unless good cause is shown. A completed, proposed order on a ~~form~~

1 approved by the Judicial Council form MC-510 ~~shall~~ must be filed with  
2 the request. The judge assigned to the proceeding ~~shall~~ must rule upon the  
3 request. If no judge has been assigned, the request ~~shall~~ will be submitted  
4 to the judge supervising the calendar department, and thereafter be ruled  
5 upon by the judge assigned to the proceeding. The clerk ~~shall~~ must  
6 promptly notify the parties that a request has been filed.  
7

8 (2) \*\*\*  
9

10 (3) (*Factors to be considered by the judge*) In ruling on the request, the judge  
11 ~~shall~~ is to consider the following factors:  
12

13 (i)(A) Importance of maintaining public trust and confidence in the  
14 judicial system;  
15

16 (ii)(B) Importance of promoting public access to the judicial  
17 system;  
18

19 (iii)(C) Parties' support of or opposition to the request;  
20

21 (iv)(D) Nature of the case;  
22

23 (v)(E) Privacy rights of all participants in the proceeding, including  
24 witnesses, jurors, and victims;  
25

26 (vi)(F) Effect on any minor who is a party, prospective witness,  
27 victim, or other participant in the proceeding;  
28

29 (vii)(G) Effect on the parties' ability to select a fair and unbiased  
30 jury;  
31

32 (viii)(H) Effect on any ongoing law enforcement activity in the case;  
33

34 (ix)(I) Effect on any unresolved identification issues;  
35

36 (x)(J) Effect on any subsequent proceedings in the case;  
37

38 (xi)(K) Effect of coverage on the willingness of witnesses to  
39 cooperate, including the risk that coverage will engender threats  
40 to the health or safety of any witness;  
41

42 (xii)(L) Effect on excluded witnesses who would have access to the  
43 televised testimony of prior witnesses;

1  
2           ~~(xiii)~~(M) Scope of the coverage and whether partial coverage might  
3           unfairly influence or distract the jury;

4  
5           ~~(xiv)~~(N) Difficulty of jury selection if a mistrial is declared;

6  
7           ~~(xv)~~(O) Security and dignity of the court;

8  
9           ~~(xvi)~~(P) Undue administrative or financial burden to the court or  
10          participants;

11  
12          ~~(xvii)~~(Q) Interference with neighboring courtrooms;

13  
14          ~~(xviii)~~(R) Maintaining orderly conduct of the proceeding;

15  
16          ~~(xix)~~(S) Any other factor the judge deems relevant.

17  
18       (4) *(Order permitting media coverage)* The judge ruling on the request to  
19       permit media coverage is not required to make findings or a statement of  
20       decision. The order may incorporate any local rule or order of the  
21       presiding or supervising judge regulating media activity outside of the  
22       courtroom. The judge may condition the order permitting media coverage  
23       on the media agency's agreement to pay any increased court-incurred  
24       costs resulting from the permitted media coverage (for example, for  
25       additional court security or utility service). Each media agency ~~shall be~~ is  
26       responsible for ensuring that all its media personnel who cover the court  
27       proceeding know and follow the provisions of the court order and this  
28       rule.

29  
30       (5) *(Modified order)* The order permitting media coverage may be modified  
31       or terminated on the judge's own motion or upon application to the judge  
32       without the necessity of a prior hearing or written findings. Notice of the  
33       application and any modification or termination ordered pursuant to the  
34       application ~~shall~~ must be given to the parties and each media agency  
35       permitted by the previous order to cover the proceeding.

36  
37       (6) *(Prohibited coverage)* The judge ~~shall~~ may not permit media coverage of  
38       the following:

39  
40           ~~(i)~~(A) Proceedings held in chambers;

41  
42           ~~(ii)~~(B) Proceedings closed to the public;

1                   ~~(iii)~~(C) Jury selection;

2  
3                   ~~(iv)~~(D) Jurors or spectators; and

4  
5                   ~~(v)~~(E) Conferences between an attorney and a client, witness, or  
6                   aide, between attorneys, or between counsel and the judge at  
7                   the bench.  
8

9                   (7) (*Equipment and personnel*) The judge may require media agencies to  
10                  demonstrate that proposed personnel and equipment comply with this  
11                  rule. The judge may specify the placement of media personnel and  
12                  equipment to permit reasonable media coverage without disruption of the  
13                  proceedings.  
14

15                Unless the judge in his or her discretion orders otherwise, the following rules  
16                shall apply:  
17

18                   ~~(i)~~(A) One television camera and one still photographer ~~shall~~ will be  
19                   permitted.  
20

21                   ~~(ii)~~(B) The equipment used ~~shall~~ may not produce distracting sound  
22                   or light. Signal lights or devices to show when equipment is  
23                   operating ~~shall~~ may not be visible.  
24

25                   ~~(iii)~~(C) An order permitting or requiring modification of existing  
26                   sound or lighting systems is deemed to require that the  
27                   modifications be installed, maintained, and removed without  
28                   public expense or disruption of proceedings. Microphones and  
29                   wiring ~~shall~~ must be unobtrusively located in places approved  
30                   by the judge and ~~shall~~ must be operated by one person.  
31

32                   ~~(iv)~~(D) Operators ~~shall~~ may not move equipment or enter or leave  
33                   the courtroom while the court is in session, or otherwise cause a  
34                   distraction.  
35

36                   ~~(v)~~(E) Equipment or clothing ~~shall~~ must not bear the insignia or  
37                   marking of a media agency.  
38

39                   (8) (*Media pooling*) If two or more media agencies of the same type request  
40                   media coverage of a proceeding, they ~~shall~~ must file a statement of agreed  
41                   arrangements. If they are unable to agree, the judge may deny media  
42                   coverage by that type of media agency.  
43

(f) \*\*\*